

MASSACHUSETTS
Public Employee Retirement Administration Commission
5 Middlesex Avenue, 3rd Floor
Somerville, MA 02145
(617) 666-4446
Fax: (617) 628-4002
www.state.ma.us/PERAC

M E M O R A N D U M

TO: All Retirement Boards

FROM: Joseph E. Connarton, Executive Director

RE: Regular Compensation status of payments for
unused vacation and personal days

DATE: June 8, 2000

The Commission has recently reviewed the regular compensation status of employer payments for unused vacation and personal days and its interpretation of 840 CMR 15.03(2)(d). The Commission has decided that retirement boards can determine that payments for unused vacation and personal days may be classified as regular compensation in accordance with the following criterion:

- The payments must be regular and recurring and pursuant to an official, written policy of the employer or a collectively bargained contract.
- Payments must only be for unused vacation days or personal days actually earned in the year of the purchase. Payments can not be for unused sick days since use of sick days is conditioned on not being able to attend work while vacation and personal days can generally be taken at the option of the employee.
- Payments can not be made as a result of giving notice of retirement.
- Payments must be available on a non-discriminatory basis, although service minimums and accumulated leave minimums may be a condition of receipt of payments in accordance with the policy or contract.
- Payments must be in a reasonable amount and, in the aggregate, not in an amount which would cause a substantial financial burden on the retirement system.

The Supreme Judicial Court in the case of Boston School Administrators ruled that regular compensation “refers to remuneration geared to work or services performed.” Boston Association of School Administrators et al. v. Boston Retirement Board et al., 383 Mass. 336, 341 (1981).

Payments for unused vacation and personal days by policy or contract in a reasonable amount meet that definition. The Appeals Court, in Zelesky v. Commissioner of the Division of PERA, ruled that the statutory definition of regular compensation is intended to prevent “the introduction of ad hoc payments

MEMORANDUM - Page Two

TO: All Retirement Boards
FROM: Joseph E. Connarton, Executive Director
RE: Regular Compensation status of payments for
unused vacation and personal days
DATE: June 9, 2000

into the calculation of pension allowances and ensure a minimum level of predictability in computing pension payments made out of the retirement system.” 30 Mass. App. Ct. 106, 109 (1990). Payments which, in the aggregate, do not have a large effect on the retirement system meet the requirement of Zelesky.

Retirement boards should review all policies and contracts of the governmental units covered by the retirement system to determine if the payments for unused vacation and personal days allowed in those policies and contracts are regular compensation. This determination should only be made on a prospective basis.

We trust the foregoing is of assistance. If you have further questions or concerns, please contact this office.